IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

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JUDGE BOYKO
FILED
2009 DEC 22 PM 3:03
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

DERICK L. CAMPBELL, 4205 Windham Pl. S Sandusky, OH 44870 Plaintiff, v. **NORFOLK SOUTHERN RAILWAY CO.,** Defendant.	**CIVIL NO.** **JURY TRIAL DEMANDED** MAG. JUDGE GALLAS

COMPLAINT

Plaintiff Derick Campbell alleges for his Complaint against Defendant Norfolk Southern Railway Co. as follows:

I. INTRODUCTION

1. Derick L. Campbell ("Campbell" or "Plaintiff") brings this action against Norfolk Southern Railway Co. ("Norfolk Southern RR" or "Defendant") for legal relief to redress unlawful discrimination on the basis of race, gender, and unlawful retaliation. Plaintiff brings this action pursuant to Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 2000e *et seq.* ("Title VII"), for race discrimination, racial harassment, and retaliation; the Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981 ("§ 1981") for race discrimination, racial harassment, and retaliation; and pursuant to the Ohio Fair Employment Practices Act ("OFEPA"), Ohio Revised Code, § 4112.02(A). The Plaintiff seeks declaratory relief, injunctive relief, back pay, compensatory, nominal, punitive, and liquidated damages, and attorney's fees, costs, and expenses, all to redress Defendant's violations of law.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction of the federal claims pursuant to 28 U.S.C. §§ 1331, 1343(a)(4), § 1981, and Title VII. The Court has supplemental jurisdiction over the Ohio state law claim pursuant to 28 U.S.C. §§ 1367(a).

3. Venue is proper pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 2000e-5(f)(3). The unlawful employment practices alleged herein were committed by Defendant within the federal judicial district of the Northern District of Ohio.

III. PARTIES

4. **Plaintiff Derick Campbell** is an African American male citizen of the United States. He resides in Sandusky, Ohio. Plaintiff is a "person aggrieved" under Title VII of the 1964 Civil Rights Act, is a "person" under the 1866 Civil Rights Act and under OFEPA.

5. **Norfolk Southern Railway Co.** is a publicly held corporation with its corporate headquarters located in Norfolk, Virginia. Norfolk Southern RR has substantial operations in the Northern District of Ohio, including a major rail yard in Cleveland. Defendant is a railroad transportation company that operates approximately 21,000 route miles in 22 eastern, mid-western, and southern states and the District of Columbia and provides connections to other rail carriers. The acts set forth in this complaint were authorized, ordered, performed, approved, and/or ratified by Defendant's officers, executives, managers, agents, employees, and/or representatives while actively engaged in execution of Defendant's business. Defendant is an "employer"" under Title VII of the 1964 Civil Rights Act and under OFEPA, and is subject to § 1981.

IV. ADMINISTRATIVE EXHAUSTION

6. Plaintiff has fulfilled all of the conditions precedent to the institution of this action under Title VII.

7. On or about November 3, 2008, Plaintiff filed a timely charge of race discrimination with the Ohio Civil Rights Commission, which, upon information and belief, wasa cross-filed with the U.S. Equal Employment Opportunity Commission. He alleged that his employer, the Defendant herein, was discriminating against his on the basis of race, color, and retaliation.

8. On September 22, 2009, the United States Equal Employment Opportunity Commission issued to Plaintiff a Right to Sue Notice based on the conclusion of the EEOC's administrative processing of the Plaintiff's charge against Norfolk Southern RR. The Plaintiff is filing this complaint within 90 days of his receipt of the Notice of Right to Sue.

9. Plaintiff's claims arising under 42 U.S.C. § 1981 do not require administrative exhaustion.

V. STATEMENT OF FACTS

10. Plaintiff began his employment with Norfolk Southern RR in October 1992. At all times relevant to this Complaint, Plaintiff worked in and around Defendant's Ohio facilities, with some travel to parts of the Norfolk Southern RR system outside of Ohio.

11. Plaintiff's current job title is Road Foreman of Engines. Generally, his job entails training and evaluating locomotive engineers.

12. Plaintiff has applied for at least eight (8) employment positions for which he was qualified. He was denied each and every such position, and, upon information and belief, the person(s) selected were, or included, lesser qualified whites. In all but one instance, Plaintiff was not even interviewed for the positions.

13. In 2008, Plaintiff received a less-favorable-than-deserved performance evaluation, which he did not deserve and reflected poorly on his employment record.

14. On several occasions, Defendant required Plaintiff to work when Plaintiff was seriously ill, and when he was on vacation, despite the availability of white employees to do the work.

15. On or about August 18, 2008, Plaintiff was working at Norfolk Southern RR's crew base in Toledo, Ohio, having been ordered to work even though he was ill by his supervisor, white male Harold Lantz Blanton.

16. At that time, Blanton ordered Plaintiff to drive a railroad locomotive engine simulator from Toledo, Ohio, to Conway, Pennsylvania, a distance of more than 200 miles. Plaintiff explained that he was ill and could barely walk

17. When Plaintiff was hunched over with abdominal pain, Blanton pulled a handgun from his company service vehicle, and, brandishing the gun, said to Plaintiff, "Turn around and let me shoot you in the back of your head and put you out of your misery."

18. Plaintiff was put in severe danger and felt that his life was being threatened.

19. Blanton reiterated his order to Plaintiff to make the trip the Conway, stating that Plaintiff could rest when he got to Conway. Plaintiff drove the simulator to Conway, then had to take a taxicab from Conway back to his home in Sandusky, Ohio.

20. The next morning, Plaintiff went to his family physician, who sent Plaintiff to a hospital, where Plaintiff underwent tests revealing sigmoid diverticulitis with an abscess formation.

21. Plaintiff was subsequently hospitalized and underwent emergency surgery.

22. In October, 2008, after having surgery to address his illness, Plaintiff complained to Defendant's management that it should take strong steps to address Blanton's egregious conduct in August, 2008.

23. Defendant's management made it clear to Plaintiff that it did not want to address the incident. Management then took only minimal, ineffective steps to address Blanton's conduct in this incident.

24. In January, 2009, Defendant sent Plaintiff correspondence that indicated that his employment would be terminated. However, Plaintiff was not terminated and he returned to work on or about March 19, 2009.

25. On several occasions, Blanton made racial comments about black men, in particular in regard to their having relations with white women.

26. Plaintiff has a white girlfriend, and this fact is known to Blanton.

27. The employer's management was aware of the racist acts by Blanton, but took no action to stop or prevent their recurrence, and took inadequate measures to punish Blanton for his harassment and abuses of the Plaintiff, including threatening Plaintiff with the handgun and ordering Plaintiff to work when Plaintiff was seriously ill.

28. Defendant employer engaged in, condoned, and ratified the racially harassing and discriminatory conduct toward Plaintiff which resulted in a racially hostile work environment. Despite knowing of the racial harassment against Plaintiff, Defendant did not take prompt, effective remedial action.

VI. CAUSES OF ACTION

COUNT I

(Discrimination on the Basis of Race in Violation of Title VII

of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e, *et seq.*)

29. Plaintiff restates and re-alleges paragraphs 1 through 28 as though set forth here in full.

30. Defendant intentionally subjected Plaintiff to a hostile work environment on the basis of his race, African American, in violation of Title VII.

31. Defendant engaged in, condoned, and ratified the racially harassing and discriminatory conduct to which Plaintiff was subjected, which resulted in a racially hostile work environment.

32. Despite knowing of the racial harassment against Plaintiff, Defendant did not take prompt, effective remedial action. Defendant is thus directly or vicariously liable for race discrimination under Title VII.

33. Defendant's discriminatory employment practices have caused Plaintiff to experience severe harm, including loss of compensation, wages, back pay, and other employment benefits. Plaintiff has further suffered severe emotional distress, humiliation, indignity and the resulting injury and loss.

34. This reckless and willful discrimination on the part of Defendant constitutes a continuing violation of the Plaintiff's statutory rights under Title VII.

35. By reason of Defendant's discrimination, Plaintiff is entitled to all equitable and legal remedies available under Title VII, including but not limited to: declaratory relief, injunctive relief, and nominal, compensatory, and punitive damages.

COUNT II

(Discrimination on the Basis of Race in Violation of

The Civil Rights Act of 1866, *as amended*, 42 U.S.C. § 1981)

36. Plaintiff restates and re-alleges paragraphs 1 through 28 as though set forth here in full.

37. Defendant intentionally subjected Plaintiff to a hostile work environment on the basis of his race, African American, in violation of § 1981.

38. Defendant engaged in, condoned, and ratified the racially harassing and discriminatory conduct to which Plaintiff was subjected, which resulted in a racially hostile work environment.

39. Despite knowing of the racial harassment against Plaintiff, Defendant did not take prompt, effective remedial action. Defendant is thus directly or vicariously liable for race discrimination under § 1981.

40. Defendant's discriminatory employment practices have caused Plaintiff to experience severe harm, including loss of compensation, wages, back pay, and other employment benefits. Plaintiff has further suffered severe emotional distress, humiliation, indignity and the resulting injury and loss.

41. This reckless and willful discrimination on the part of Defendant constitutes a continuing violation of the Plaintiff's statutory rights under § 1981.

42. By reason of Defendant's discrimination, Plaintiff is entitled to all equitable and legal remedies available under § 1981, including but not limited to: declaratory relief, injunctive relief, and nominal, compensatory, and punitive damages.

COUNT III

(Discrimination on the Basis of Race in Violation of the

Ohio Fair Employment Practices Act, Ohio Revised Code, § 4112.02(A)

43. Plaintiff restates and re-alleges paragraphs 1 through 28 as though set forth here in full.

44. Defendant intentionally subjected Plaintiff to a hostile work environment on the basis of his race, African American, in violation of OFEPA.

45. Defendant engaged in, condoned, and ratified the racially harassing and discriminatory conduct to which Plaintiff was subjected, which resulted in a racially hostile work environment.

46. Despite knowing of the racial harassment against Plaintiff, Defendant did not take prompt, effective remedial action. Defendant is thus directly or vicariously liable for race discrimination under OFEPA.

47. Defendant's discriminatory employment practices have caused Plaintiff to experience severe harm, including loss of compensation, wages, back pay, and other employment benefits. Plaintiff has further suffered severe emotional distress, humiliation, indignity and the resulting injury and loss.

48. This reckless and willful discrimination on the part of Defendant constitutes a continuing violation of the Plaintiff's statutory rights under OFEPA.

49. By reason of Defendant's discrimination, Plaintiff is entitled to all equitable and legal remedies available under Title VII, including but not limited to: declaratory relief, injunctive relief, and nominal, compensatory, and punitive damages.

COUNT IV

(Discrimination on the Basis of Race in Violation of

Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e, *et seq.*)

50. Plaintiff restates and re-alleges paragraphs 1 through 28 as though set forth here in full.

51. Defendant intentionally denied Plaintiff promotions to eight (8) positions for which he applied and was qualified, and, instead, hired whites who had lesser qualifications.

52. Defendant's discriminatory non-selections of Plaintiff have caused Plaintiff to experience severe harm, including loss of compensation, wages, back pay, and other employment benefits. Plaintiff has further suffered severe emotional distress, humiliation, indignity and the resulting injury and loss.

53. This discrimination on the part of Defendant was intentional, reckless and/or willful, and constitutes a violation of the Plaintiff's statutory rights under Title VII.

54. By reason of Defendant's discrimination, Plaintiff is entitled to all equitable and legal remedies available under Title VII, including but not limited to: declaratory relief, injunctive relief, back pay, nominal, compensatory, and punitive damages, and benefits.

COUNT V

(Discrimination on the Basis of Race in Violation of

The Civil Rights Act of 1866, *as amended*, 42 U.S.C. § 1981)

55. Plaintiff restates and re-alleges paragraphs 1 through 28 as though set forth here in full.

56. Defendant intentionally denied Plaintiff promotions to eight (8) positions for which he applied and was qualified, on the basis of his race, African American, in violation of § 1981. Instead, Defendant hired whites who had lesser qualifications.

57. Defendant's discriminatory non-selections of Plaintiff have caused Plaintiff to experience severe harm, including loss of compensation, wages, back pay, and other employment benefits. Plaintiff has further suffered emotional distress, humiliation, indignity and the resulting injury and loss.

58. This discrimination on the part of Defendant was intentional and willful, and constitutes a violation of the Plaintiff's statutory rights under § 1981.

59. By reason of Defendant's discrimination, Plaintiff is entitled to all equitable and legal remedies available under § 1981, including but not limited to: declaratory relief, injunctive relief, back pay, nominal, compensatory, and punitive damages, and benefits.

COUNT VI

(Discrimination on the Basis of Race in Violation of the

Ohio Fair Employment Practices Act ("OFEPA"), Ohio Revised Code, § 4112.02(A)

60. Plaintiff restates and re-alleges paragraphs 1 through 28 as though set forth here in full.

61. Defendant intentionally denied Plaintiff promotions to eight (8) positions for which he applied and was qualified, on the basis of his race, African American, in violation of OFEPA. Instead, Defendant hired whites who had lesser qualifications.

62. Defendant's discriminatory non-selections of Plaintiff have caused Plaintiff to experience severe harm, including loss of compensation, wages, back pay, and other employment

benefits. Plaintiff has further suffered emotional distress, humiliation, indignity and the resulting injury and loss.

63. This discrimination on the part of Defendant was intentional and willful, and constitutes a violation of the Plaintiff's statutory rights under OFEPA.

64. By reason of Defendant's discrimination, Plaintiff is entitled to all equitable and legal remedies available under § 1981, including but not limited to: declaratory relief, injunctive relief, back pay, nominal, compensatory, and punitive damages, and benefits.

COUNT VII

(Retaliation in Violation of Title VII

of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e, *et seq.*)

65. Plaintiff restates and re-alleges paragraphs 1 through 28 as though set forth here in full.

66. Defendant retaliated against the Plaintiff by subjecting the Plaintiff to discriminatory harassment following Plaintiff's complaints of discrimination. This retaliation was done intentionally, willfully and with reckless disregard for the rights of the Plaintiff.

67. Defendant authorized, ratified and/or condoned the retaliation detailed in this count.

68. By reason of Defendant's retaliation, Plaintiff is entitled to all equitable and legal remedies available under Title VII, including but not limited to: declaratory relief, injunctive relief, and nominal, compensatory, and punitive damages.

COUNT VIII

(Retaliation in Violation of the Civil Rights Act of 1866, *as amended*, 42 U.S.C. § 1981)

69. Plaintiff re-alleges and incorporates by reference paragraphs 1-17 above, as though fully stated in this paragraph.

70. Defendant retaliated against the Plaintiff by subjecting the Plaintiff to discriminatory harassment following Plaintiff's complaints of discrimination. This retaliation was done willfully and with reckless disregard for the rights of the Plaintiff.

71. Defendant authorized, ratified and/or condoned the retaliation detailed in this count.

72. By reason of Defendant's retaliation, Plaintiff is entitled to all equitable and legal remedies available under § 1981, including but not limited to: declaratory relief, injunctive relief, and nominal, compensatory, and punitive damages.

COUNT IX

(Retaliation in Violation of the Ohio Fair Employment Practices Act,

Ohio Revised Code, § 4112.02(A))

73. Plaintiff restates and re-alleges paragraphs 1 through 28 as though set forth here in full.

74. Defendant retaliated against the Plaintiff by subjecting the Plaintiff to discriminatory harassment following Plaintiff's complaints of discrimination. This retaliation was done intentionally, willfully and with reckless disregard for the rights of the Plaintiff.

75. Defendant authorized, ratified and/or condoned the retaliation detailed in this count.

76. By reason of Defendant's retaliation, Plaintiff is entitled to all equitable and legal remedies available under OFEPA, including but not limited to: declaratory relief, injunctive relief, and nominal, compensatory, and punitive damages.

VII. PRAYER FOR RELIEF

WHEREFORE, the Plaintiff requests the following relief:

A. A declaratory judgment that the Defendant's conduct challenged herein is illegal and in violation of Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e, *et seq.*; the Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981; and the Ohio Fair Employment Practices Act, Ohio Revised Code, § 4112.02(A).

B. A permanent injunction against the Defendant and its officers, owners, agents, successors, employees and representatives, and any and all persons acting in concert with them, from engaging in, tolerating, or condoning, any further unlawful racial and/or gender discrimination and/or racial and/or sexual harassment as set forth herein;

C. A permanent injunction against the Defendant and its officers, owners, agents, successors, employees and representatives, and any and all persons acting in concert with them, from engaging in any further unlawful gender pay discrimination.

D. An Order requiring the Defendant to make the Plaintiff whole by awarding his back pay (plus prejudgment interest); benefits; nominal, compensatory, punitive, and/or liquidated damages in the amount of $3,000,000 or in an amount to be determined at trial; and all reasonable legal costs and attorneys' fees associated with this action;

E. Retention of jurisdiction by the Court until such time as the Court is satisfied that Defendant has remedied the violations complained of herein; and

F. Such other relief as may be deemed appropriate by the Court.

VIII. JURY TRIAL DEMAND

77. Plaintiff Derick L. Campbell requests a trial by jury as to all issues triable as of right to a jury.

Respectfully submitted this 22nd day of December, 2009,

Derick L. Campbell
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Plaintiff pro se